

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 3
THE HONORABLE MICHAEL W. JONES
TENTATIVE RULINGS FOR JANUARY 5, 2023 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, JANUARY 5, 2023 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, JANUARY 4, 2023**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: REMOTE APPEARANCES ARE STRONGLY ENCOURAGED FOR CIVIL LAW AND MOTION MATTERS. (PLACER COURT LOCAL RULE 10.24.) More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by **THE HONORABLE MICHAEL W. JONES**. If oral argument is requested, it shall be heard at **8:30 a.m.** in **DEPARTMENT 3** located at the Historic Auburn Courthouse, 101 Maple Street, Auburn, California.

1. M-CV-0082000 BANK OF AMERICA v. JULIN, KIRK

Plaintiff's Motion for Judgment on the Pleadings

The unopposed motion is granted. In the current request, plaintiff seeks judgment on the pleadings as to its single cause of action for common counts. Such a motion may be granted where plaintiff shows the complaint states sufficient facts to constitute a cause of action and the answer does not state facts sufficient to constitute a defense. (Code of Civil Procedure section 438(c)(1)(A).)

A review of the complaint shows plaintiff has sufficiently alleged facts of a statement of indebtedness for \$21,734.46 provided through a revolving charge account with defendant failing to pay the entirety of the outstanding balance. This is sufficient to state a cause of action for common counts. (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 460.) Looking at the answer, defendant does not deny the allegations in the complaint. Defendant proposes a settlement regarding the outstanding debt. The allegations within the answer are insufficient

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1. M-CV-0082000 BANK OF AMERICA v. JULIN, KIRK

to establish a defense to the common counts claim. Thusly, plaintiff is entitled to judgment on the pleadings and the motion is granted. (Code of Civil Procedure section 438(c)(1)(A).)

Judgment is entered in favor of plaintiff in the amount of \$22,239.46, which includes \$21,734.46 in damages plus \$505.00 in costs.

2. M-CV-0082370 STANFORD TERRACES v. POCHOP, CHRISTINA

Defendant's Motion to Set Aside Default and Default Judgment

Preliminary Matters

As an initial matter, the court file does not reflect defendant served plaintiff with a copy of the ex parte order or the motion. Plaintiff also attests that it still has not been served with the motion. The failure to properly serve plaintiff is, in and of itself, a basis to deny the motion.

Ruling on Motion

The motion is denied. In the current request, defendant seeks to set aside the stipulated judgment entered on December 16, 2022, asserting they neglected to make the additional payment as agreed to due to unforeseen circumstances and neglected to respond to motion seeking entry of judgment. Defendant executed a stipulation for entry of judgment on November 22, 2022 and then failed to comply with the terms of the stipulation. Plaintiff then sought entry of judgment pursuant to the terms of the stipulation. Defendant has not sufficiently demonstrated a basis to set aside the stipulated judgment. Since defendant has not made a sufficient showing for relief, the motion is denied.

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3. M-CV-0082578 IRPO WHITE, DAWN

Expedited Minor's Compromise Petition for Don White-Clark

The court adopts the amended intending ruling issued on December 7, 2022 as the ruling of the court. It is also noted venue of the case in Placer County is not clear as the collision occurred in Butte County and the minor resides in Butte County. The petition for expedite approval is denied without prejudice to allow petitioner to petition under the general minor's compromise petition process.

4. M-CV-0082803 MONTESSA MANAGEMENT LP v. SPURLING, ALYSON

The motion to quash is dropped from the calendar as no moving papers were filed with the court.

5. S-CV-0041710 GALLAGHER BASSETT SERV v. HUNANYAN, GARIK

Defendants' motion to compel discovery responses and monetary sanctions is dropped from the calendar at the request of the moving party.

6. S-CV-0044000 FECKNER, TONYA v. CITY OF LINCOLN PARKS & REC

Petition to Approve Compromise of Minor's Claim for Tanner Feckner

The petition is granted as prayed. After careful consideration of the petition and supplemental declaration, the court finds the settlement is in the best interest of the minor. (Probate Code sections 2504, 3500; Code of Civil Procedure section 372; *Pearson v. Superior Court (Nicholson)* (2012) 202 Cal.App.4th 1333, 1337.) If oral argument is requested, the appearance of the minor at the hearing is waived.

7. S-CV-0044900 LANGLEY, DANIEL v. EMPIRE HORSE & CARRIAGE

The motion for summary judgment or, in the alternative, summary adjudication is continued to Thursday, January 19, 2023 at 8:30 a.m. in Department 3.

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8. **S-CV-0045656 ALONGI, RACHELLE v. FIVE STAR BANK**

Defendants' Demurrer to the Second Amended Complaint (SAC)

Preliminary Matters

As an initial matter, the court shall exercise its discretion to consider plaintiff's untimely opposition. The court notes, however, tardiness and unresponsiveness have become recurring themes in this action. Counsel is admonished to timely file documents presented to the court and opposing counsel or the court will consider striking the untimely filings in the future.

Ruling on Demurrer

The demurrer is overruled. A demurrer is reviewed under well-established principles. It tests the legal sufficiency of the pleading, not the truth of the allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations are deemed to be true no matter how improbable they may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court has reviewed the SAC and moving papers keeping this in mind. The allegations within the SAC, when read as a whole are sufficient to support a claim of equitable tolling of the applicable statute of limitations. This is sufficient at the pleading stage and the demurrer is overruled.

Defendants shall file and serve their answer or general denial by January 20, 2023.

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9. S-CV-0046296 BREHM, KRIS v. PLATINUM LIVING SERV

Plaintiffs' Motion for Approval of PAGA Settlement

The unopposed motion is granted. The court reviews the moving papers along with the entirety of the court file to determine that the settlement is genuine, meaningful, and consistent with the underlying purposes of the PAGA-related statute. (Labor Code section 2699(l); *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110.) The court must also determine whether the PAGA settlement appears fundamentally fair, reasonable, and adequate. (Ibid.) The court has carefully reviewed and considered the PAGA settlement and plaintiffs' moving papers filed in connection with the motion. The court determines a sufficient showing has been made that the settlement is fair, reasonable, genuine, meaningful, and consistent with the purpose of PAGA. The court incorporates by reference the findings and orders outlined in the proposed order.

10. S-CV-0046710 GOFF, DAVID v. MULLICAN, JASON

The motion to compel third party documents is dropped from the calendar at the request of the moving party.

11. S-CV-0046726 FRATTAROLI, ROCCO v. STANLEY, DOUG

Plaintiff's Motion to Strike Defendant Ridgeline Entertainment's Answer

The motion is denied. Plaintiff requests the court strike two apparently duplicative answers filed by defendant Ridgeline Entertainment, on April 11, 2018, in response to plaintiff's original complaint. However, plaintiff has subsequently amended the pleading twice with the second amended complaint (SAC) acting as plaintiff's operative pleading. The SAC expanded the scope of the claims brought against all defendants, including defendant Ridgeline Entertainment. The amendments were substantive changes, superseding the original complaint and requiring all defendants to file answers directed towards the SAC. (see *Carrasco v. Craft* (1985) 164 Cal.App.3d 796, 808-809.) The court file does not reflect defendant Ridgeline Entertainment filed any responsive pleading to the SAC. There also does not appear to be any stipulation entered into by the parties deeming the prior answers to be an answer to the SAC. As it stands, there is no operative answer filed by defendant Ridgeline Entertainment to be stricken. For these reasons, the motion is denied.

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12. S-CV-0046926 KEMP, RICHARD v. KEMP, LEE

Intervenor Liberty Mutual's Motion to Compel Discovery Responses, Deem RFAs Admitted, and Sanctions

The motion is granted. Plaintiff Richard Kemp shall provide verified responses and responsive documents, without objections, to form interrogatories, set one; special interrogatories, set one; and requests for production of documents, set one, within 10 days of service of the signed order after hearing.

The matters encompassed in the requests for admissions, set one, are deemed admitted as to plaintiff Richard Kemp.

Sanctions in the amount of \$1,005 are imposed upon plaintiff Richard Kemp.

13. S-CV-0047592 PAUL HILLS CONST v. ALL HOME APPLIANCE

It is noted three separate discovery motion hearings are calendared but only one motion was filed by defendant addressing three sets of discovery. The remaining two calendared motions are dropped from the calendar as no separate moving papers were filed with the court.

Defendant's Motion to Compel Further Discovery Responses and Sanctions

The motion is granted. Plaintiff shall provide further verified responses and responsive documents, without further objections, to form interrogatories, set one; special interrogatories, set one; and request for production of documents, set one, within 10 days of service of the signed order after hearing.

Defendant's request for sanctions is denied in light of plaintiff's representations that it will provide supplemental responses to the discovery.

14. S-CV-0048458 DANDINI, HERSEY v. CMH HOMES

The motion to compel arbitration is continued to Thursday, January 19, 2023 at 8:30 a.m. in Department 3.

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15. S-CV-0048668 WADDELL, COLBY v. HINRICHSSEN, JULIEANNE

Plaintiff's Motion for Protective Order

The court is compelled to address the issue of civility in litigation before addressing the substance of this motion. In the simplest of terms, this motion should never have been presented to the court. A review of the filings related to this initial round of early litigation discovery reveals it is the quintessential example of zealous advocacy crossing the line into rancor and gamesmanship. Granted, litigation is an adversarial process. Nonetheless, "it is vital to the integrity of our adversary legal process that attorneys strive to maintain the highest standards of ethics, civility, and professionalism in the practice of law." (*People v. Chong* (1999) 76 Cal.App.4th 232, 243.) Civility and courtesy are expectations of the legal profession, they are not weaknesses. "As officers of the court with responsibilities to the administration of justice, attorneys have an obligation to be professional with clients, other parties and counsel, the courts and the public. This obligation includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, and cooperation, all of which are essential to the fair administration of justice and conflict resolution." (California Attorney Guidelines of Civility and Professionalism.)

It may appear to be an old-fashioned approach but practicing law in a civil manner, without being rude and aggressive to each other, allows for counsel to obtain positive results for their clients with the least amount of conflict for everyone. It also allows the public to assess the legal system on what is done rather than by how badly or inappropriately everyone is behaving. Taking the temperature down and allowing cooler heads to prevail results in a better outcome for the client, counsel, and the judicial system as a whole. It avoids the necessity of all parties and the court from spending hours reviewing documentation on a motion like the present one, where congenial lawyering and professional courtesy could have resolved the entire matter. The court impresses upon both counsel to keep these tenets in mind as they continue litigating this matter.

If oral argument is requested and prior to the presentation of any substantive argument, the parties shall describe the civil, professional, and ethical efforts undertaken to engage in *meaningful* meet and confer prior to proceeding with this motion. The parties shall also review the California Attorney Guidelines of Civility and Professionalism (Guidelines) along with Placer Court Local Rule 10.17 prior to any request for oral argument.

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15. S-CV-0048668 WADDELL, COLBY v. HINRICHSSEN, JULIEANNE

Turning to the motion, the motion is denied without prejudice. Plaintiff has not made a sufficient showing to support the issuance of a protective order at this time. Specifically, it has not been shown that defendants have propounded duplicative and burdensome sets of discovery. To the contrary, a portion of the documentary evidence submitted by defendants shows their requests for admissions sought different admissions. The court declines to issue any protective order until such time as plaintiff demonstrates sufficient good cause to support the request.

To the extent defendants seek affirmative relief in their opposition, those requests are denied.

Both parties' requests for sanctions are denied.

16. S-CV-0048718 MAHER, TRICIA v. VON HOUSEN'S MOTORS

It is noted the court's calendar lists only one calendar entry for the current hearing date. The court file, however, shows that there are four separate motions filed and briefed by the parties.

The two pending demurrers and two pending motions to strike are all continued to Thursday, January 19, 2023 at 8:30 a.m. in Department 3.

The clerk shall add four separate entries for calendaring in the case management system for the following motions:

Defendant Von Housen's demurrer is calendared and set for hearing on Thursday, January 19, 2023 at 8:30 a.m. in Department 3.

Defendant Von Housen's motion to strike is calendared and set for hearing on Thursday, January 19, 2023 at 8:30 a.m. in Department 3.

Defendant Western Surety Company's demurrer is calendared and set for hearing on Thursday, January 19, 2023 at 8:30 a.m. in Department 3.

Defendant Western Surety Company's motion to strike is calendared and set for hearing on Thursday, January 19, 2023 at 8:30 a.m. in Department 3.

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17. S-CV-0048894 MIELKE, VANESSA v. ROSEVILLE CITY MANAGER

The motion for leave to file second amended complaint is dropped from the calendar in light of the court's ruling on December 8, 2022 sustaining the demurrer and granting plaintiff leave to file a second amended complaint.

18. S-CV-0049058 JP MORGAN CHASE v. MANGINI, THOMAS

Plaintiff's Application for Writ of Possession

The unopposed application is granted as prayed.

A writ of possession shall issued for the 2019 BMW 5 Series, VIN no. WBAJB9C53KB289146 and the 2019 Land Rover RR Sport, VIN No. SALWR2RE2KA820046.

19. S-CV-0049240 ALL-ERA PROP v. BAILEY, DANIEL

The motion to change venue is dropped from the calendar. A full dismissal without prejudice was entered on December 27, 2022.